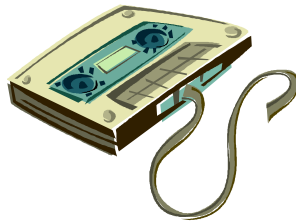


**Q: Can I attend meetings, hearings, Preliminary Review meetings and Disciplinary Conferences?**

Attorneys may attend meetings and hearings that are part of the student disciplinary process; however, the role of attorneys is limited to client consultation. Attorneys may not address Hearing Officers, Hearing Boards, speak in Disciplinary Conferences or question witnesses (UCSC, Part 53).

**Q: Can I get a copy of the hearing tape?**

The tape of the proceeding is available for review in the Office of Student Conduct while appeals are pending and is thereafter preserved for so long as the underlying case record is maintained. In those instances where review of the tape at the Office of Student Conduct is not practical, copies may be requested, subject to the payment of applicable copying fees and constraints of the Family Education Rights and Privacy Act, 20 U.S.C. 1232g; 34 C.F.R. 99.1 et seq.

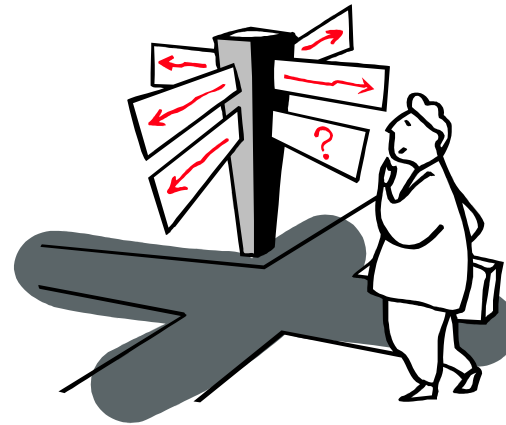


**Q: What are the rights of appeal?**

Appeals are submitted in writing to the Director of Student Conduct, who will transmit the appeal to the appropriate Appeals Committee. Appeals are decided on the basis of the record and written submissions. An appeal does not entail a new hearing or Disciplinary Conference on the merits of the case or the taking of additional testimony; rather, it is an opportunity for a review of those parts of the hearing record challenged by the respondent. See UCSC, Parts 56-66.



**ATTORNEY GUIDE  
TO THE  
STUDENT CONDUCT  
PROCESS  
AT RUTGERS, THE STATE UNIVERSITY OF  
NEW JERSEY**



*Information and Frequently Asked Questions to help you understand our disciplinary process and the role of an attorney within it.*

“ ... The attempted analogy of student discipline to criminal proceedings against juveniles and adults is not sound. The nature and proceedings of the (campus) disciplinary process ... should not be required to conform to federal processes of criminal law, which are far from perfect, and designed for circumstances and ends unrelated to the academic community.”

**44F.R.D. (142) (W.D. Mo.) General Order on Judicial Standards of Procedures and Substance of Student Discipline in Tax Supported Institutions of Education**

## THE ROLE OF THE ATTORNEY

Students are generally expected to actively participate (with the assistance of a Campus Adviser) in all student conduct matters, whether or not the student is also facing concurrent criminal charges for the same set of circumstances. Students may have an attorney present during all student conduct proceedings, but the attorney may not address Hearing Officers, Hearing Boards, speak in a Disciplinary Conference, or question witnesses.

Some of the information in the University Code of Student Conduct (UCSC) that is specific to the roles of attorneys and advisers in our disciplinary process is excerpted on the next page. The full text is available at:

<http://studentconduct.rutgers.edu>



This brochure is modeled on Illinois State University's "Disciplinary Guide for Attorneys." Adapted with permission from Illinois State University.



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### **Q: Why would the university proceed with a sexual assault case prior to the criminal trial?**

The U.S. Department of Education Office of Civil Rights (OCR) guidelines require a "prompt" response to allegations of sexual harassment—including sexual assault.

A university hearing need not be postponed in order to preserve the Fifth Amendment rights of students in subsequent criminal cases—students may exercise their right to remain silent. (Students do not have a Constitutional right to active legal representation in university disciplinary cases. Detailed analysis can be found in *Hart v. Ferris State* 557 F. Supp. 1379, 1386-88 [W.D. Mich, 1983])

### **Q: If I am an attorney and member of the community, can I serve as an attorney under the Code?**

No. The UCSC part 3(m) states "the term attorney means a person who holds a J.D., LL.B. or LL. M. degree from an accredited college or university, who passed a bar exam, and is not a member of the University community, as defined in Part 3(t) of this Code."

### **Q: If I am a Campus Adviser and a member of the University community who holds a law degree, can I be both the Campus Adviser and assist as an attorney?**

Under the provisions of the UCSC, Campus Advisers may address Boards, and question witnesses, whereas attorneys may not (UCSC, Parts 53 and 54). Therefore, the same person cannot act in both capacities without violating the intent of the UCSC.

### **Q: If I am an attorney, can I serve as a Campus Adviser?**

Members of the University community (UCSC, Part 3(t)) who hold law degrees are permitted to serve as campus advisers.

**Q: Why are the due process protections afforded the student different then those which would be provided in a criminal proceeding?**

The courts have long recognized the differing interests of the University community from that of the criminal justice process. A significant body of case law has been established that outlines basic expectations of fairness in any student disciplinary process. Here is a reference list of publications and significant cases:

*The Law of Higher Education* (3rd edition) by William Kaplin and Barbara Lee, Jossey–Bass Publications

*Year 2000 Cumulative Supplement to the Law of Higher Education*, (3rd Edition) by William Kaplin and Barbara Lee, published by the National Association of College and University Attorneys (NACUA) (2000)

*The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life?* by Robert Bickel and Peter Lake, published by Carolina Academic Press (1999)

*Dixon v. Alabama State Board of Education* (1961, 5th Circuit)

*Esteban v. Central Missouri State College* (1969, 8th Circuit)

*Soglin v. Kauffman* (1969, 7th Circuit)

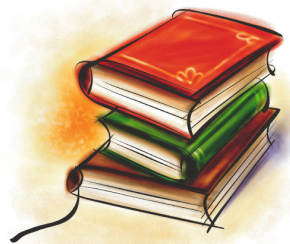
*Paine v. Board of Regents of the University of Texas System* (1973, 5th Circuit)

*Goss v. Lopez* (1975, U.S. Supreme Court)

*Krasnow v. Virginia Polytechnic Institute* (1977, 4th Circuit)

*Ewing v. Regents of University of Michigan* (1985, 6th Circuit)

*Osteen v. Henley* (1993, 7th Circuit)



## THE UNIVERSITY CODE OF STUDENT CONDUCT

### UCSC, Part 53:

“Both complainants and respondents may be advised by an attorney as defined in Part 3(m). The role of the attorney shall be limited to consultation and he/she may not address Hearing Officers, Hearing Boards, speak in Disciplinary Conferences or question witnesses.”

### UCSC Part 54:

“The Director of Student Conduct will maintain a list of qualified individuals who are currently eligible to serve as Campus Advisers and who may be selected to assist complainants or respondents in Disciplinary Conferences or University Hearings on any campus. Campus Advisers shall be allowed to speak in Disciplinary Conferences and Hearings, make procedural objections, questions witnesses, and make opening and closing statements. Attorneys, as defined in Part 3(m) of this Code, shall not be permitted to serve as Campus Advisers.”

### UCSC Part 15:

“The focus of inquiry in disciplinary proceedings shall be to determine whether a student has violated the UCSC.”

There is no formal discovery under the USCS. Complainants and respondents shall be accorded reasonable access to the case file (UCSC, Part 32). Complainants and respondents may also petition the Hearing Officer to summon additional witnesses or make a ruling on evidence not included in the case file (UCSC, Part 35).

## FREQUENTLY ASKED QUESTIONS

### **Q: I have been asked to represent a student in a conduct review. How do I establish this with the University?**

It is the practice of the Office of Student Conduct to correspond at all times directly with the student, and not through any third party. A third party, such as an attorney, may receive copies of correspondence if the student authorizes our office in writing. Part 34 of the UCSC details the timeline in which the Office of Student Conduct requires notification of choice of Campus Adviser and choice of attorney.

### **Q: What will happen if my client refuses to participate in the student conduct process?**

The process will continue with or without the student's involvement. Respondents who fail to appear after proper notice shall be deemed to have pled no contest to the charges pending against them (UCSC, Part 36). The student may not use his or her refusal to participate as a later ground for appealing a decision.

### **Q: My client is charged with a crime off-campus. Can I get the proceedings delayed until the criminal matter is resolved?**

Written application for postponement setting forth good cause may be made to the Hearing Officer. Pending criminal proceedings will not ordinarily serve as a basis to postpone a student disciplinary proceeding.

The student disciplinary process at Rutgers University is not attempting to determine whether or not a student has violated the law; the University is trying to determine whether or not a student violated Uni-



versity rules and regulations. See UCSC, Parts 6 and 33.

### **Q: Can you provide more information on the university taking jurisdiction?**

A 1989 Opinion of the Maryland Attorney General ("Authority to Discipline Off-Campus Misconduct," No. 89-002) addressed pertinent constitutional issues at public institutions (private schools have more latitude to define standards of student conduct, as part of the contract of enrollment.) Furthermore, *The General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education*, 45 F.R.D. 133, 145 (W.D. Mo.1968) states, "In the field of discipline, scholastic and behavioral, an institution may establish any standards reasonably relevant to the lawful missions, processes, and functions of the institution ... Standards so established may apply to student behavior on and off campus when relevant to any lawful mission, process, or function of the institution. By such standards of student conduct the institution may prohibit any action or omission which impairs, interferes with, or obstructs the missions, processes and functions of the institution."

### **Q: Can the student be charged with a violation of the UCSC for behavior that occurs off-campus?**

The University reserves the right to take necessary and appropriate action to protect the safety and well being of the campus community, including taking disciplinary action against students whose behavior off University premises indicates they pose a substantial danger to others in the University community (UCSC, Part 5 and endnote 4).

### **Q: What is the standard of proof in the student conduct process?**

The standard of proof for contested charges is clear and convincing evidence (UCSC, Part 45).